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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

GOVINDA HOGAN, CATHERINE  
GIASONE, HEATHER BODOR, JAMES  
MANNING, ADRIAN HARO, JEFFREY  
SHERRILL, JOHNNIE PACHECO, and  
ISABELLA JANOVICK, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

USPlabs, LLC, a Texas Limited Liability  
Company, and DOES 1-25, inclusive,

Defendants.

CASE NO. BC486925

Assigned to the Hon. William F. Highberger  
Dept 307

**CLASS ACTION**

**STIPULATION AND AGREEMENT OF  
SETTLEMENT**

1 It is hereby stipulated and agreed by and between the undersigned Parties, subject to the  
2 approval of the Court, that the settlement of this Action shall be effectuated pursuant to the terms  
3 and conditions set forth in this Settlement Agreement.

4 **ARTICLE I – PREAMBLE**

5 1. WHEREAS Govinda Hogan, Catherine Giasone, Heather Bodor, James Manning,  
6 Adrian Haro, Jeffrey Sherrill, Johnnie Pacheco, and Isabella Janovick are the named plaintiffs in the  
7 above-captioned action entitled *Govinda Hogan, Catherine Giasone, Heather Bodor, James*  
8 *Manning, Adrian Haro, Jeffrey Sherrill, Johnnie Pacheco, and Isabella Janovick, on behalf of*  
9 *themselves and all others similarly situated, Plaintiffs, v. USPlabs, LLC*, Los Angeles County  
10 Superior Court, No. BC486925 (“the Action”);

11 2. WHEREAS USPlabs, LLC (“USPlabs”) is the defendant in the Action;

12 3. WHEREAS Giasone, Bodor, Manning, and Janovick allege that they relied on  
13 allegedly false and misleading statements contained on the labels and in advertisements and  
14 marketing materials for USPlabs’ “OxyELITE Pro” dietary supplement product regarding the  
15 lawfulness, safety, and effectiveness of the product, and that such statements violate state consumer  
16 protections laws (including California’s False Advertising Laws ("FAL"), Bus. & Prof. Code  
17 §17500 et. seq., California's Unfair Competition Laws ("UCL"), Bus. & Prof. Code §17200 et seq.,  
18 California's Consumer Legal Remedies Act ("CLRA"), Civil Code §1750 et seq., and Texas’  
19 Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.41 et seq.) as well as the Magnuson  
20 Moss Warranty Act, and that as a direct result of such violations USPlabs has been unjustly  
21 enriched;

22 4. WHEREAS Hogan, Pacheco, Haro, and Sherrill allege that they relied on allegedly  
23 false and misleading statements contained on the labels and in advertisements and marketing  
24 materials of USPlabs’ “Jack3d” dietary supplement product regarding the lawfulness, safety, and  
25 effectiveness of the product, and that such statements violate state consumer protection laws  
26 (including California’s False Advertising Laws ("FAL"), Bus. & Prof. Code §17500 et. seq.,  
27 California's Unfair Competition Laws ("UCL"), Bus. & Prof. Code §17200 et seq., California's  
28 Consumer Legal Remedies Act ("CLRA"), Civil Code §1750 et seq., and Texas’ Deceptive Trade

1 Practices Act, Tex. Bus. & Com. Code §§ 17.41 *et seq.*) as well as the Magnuson Moss Warranty  
2 Act, and that as a direct result of such violations USPlabs has been unjustly enriched;

3 5. WHEREAS Hogan, Giasone, Bodor, Manning, Haro, Sherrill, Pacheco, and  
4 Janovick seek to recover monetary and equitable remedies on behalf of themselves and a class of  
5 similarly situated persons;

6 6. WHEREAS Hogan, Giasone, Bodor, Manning, Haro, Sherrill, Pacheco, and  
7 Janovick acknowledge they have not suffered personal injuries as a result of their personal  
8 consumption and use of the USPlabs Products;

9 7. WHEREAS the Parties have negotiated this Settlement at arms-length from positions  
10 of informed strength, and have had a full and fair opportunity to evaluate the strengths and  
11 weaknesses of their respective positions;

12 8. WHEREAS USPlabs denies the allegations of the Action, denies all allegations of  
13 wrongdoing and of liability, and denies any causation of harm or damage to the Settlement Class;

14 9. WHEREAS USPlabs nevertheless has concluded that, in light of the costs, risks and  
15 disruption of litigation, this Settlement is appropriate on the terms and conditions set forth herein;

16 10. WHEREAS Hogan, Giasone, Bodor, Manning, Haro, Sherrill, Pacheco, and  
17 Janovick believe that the claims asserted in the Action are meritorious;

18 11. WHEREAS Hogan, Giasone, Bodor, Manning, Haro, Sherrill, Pacheco, and  
19 Janovick nevertheless have concluded that, in light of the costs, delay and risks of litigation of the  
20 matters in dispute, the risk that the Court will not certify their claims as a class action, particularly  
21 in complex class action proceedings, the risk of losing on the merits, and in the desire to provide  
22 relief to the class sooner rather than later, this Settlement is fair, reasonable, adequate, and in the  
23 best interests of the Settlement Class;

24 12. WHEREAS the performance of any act referenced in this Settlement Agreement, or  
25 any other circumstance regarding the Parties' agreement to settle, shall not be considered an  
26 admission of liability or as an admission of any allegations made in any claim or litigation,  
27 including this Action, the Dismissed Actions, or the Related Disputes; and  
28



1 have been asserted in the Action through the date the Preliminary Approval Order is entered,  
2 including but not limited to any claims that are based on, arise out of, or relate to the manufacturing,  
3 marketing, sale, labeling and/or advertising of the USPlabs Products or the lawfulness, safety, or  
4 efficacy of the USPlabs Products, including but not limited to any claims relating to the pending  
5 Department of Defense investigation of 1,3-dimethylamylamine (“DMAA”) or to the FDA’s April  
6 27, 2012 Warning Letter to USPlabs regarding the USPlabs Products. Notwithstanding the above,  
7 “Class Released Claims” shall exclude any claims for personal injury on behalf of the Settlement  
8 Class.

9 6. “Class Representatives” means Hogan, Giasone, Bodor, Manning, Haro, Sherrill,  
10 Pacheco, and Janovick.

11 7. “Common Fund” means a fund in the amount of Two Million Dollars  
12 (\$2,000,000.00), to be funded as set forth herein. The Aggregate Fees, Costs, and Expenses shall be  
13 paid from the Common Fund. The Common Fund represents the absolute, capped amount of  
14 USPlabs’ financial liability for the Settlement, except for costs associated with labeling changes  
15 required by this Settlement Agreement, which costs shall be USPlabs’ sole responsibility.

16 8. “Court” means the Superior Court of the State of California for the County of Los  
17 Angeles.

18 9. “Dismissed Actions” means the actions previously brought against USPlabs related  
19 to the claims raised in this Action and voluntarily dismissed without prejudice.

20 10. “Effective Date” means the first date by which all of the following events shall have  
21 occurred: (a) the Court has entered the Preliminary Approval Order; (b) the Court has entered the  
22 Final Approval Order and Judgment; and (c) the Final Approval Order and Judgment have become  
23 Final.

24 11. “Fee and Cost Application” means the written motion or application by which the  
25 Class Representatives and/or Class Counsel request that the Court award attorneys’ fees, costs,  
26 expenses and incentive awards.

27 12. “Final” means that the Court has entered the Final Approval Order and Judgment on  
28 the docket in the Action, and (a) the time to appeal from such order has expired and no appeal has

1 been timely filed, (b) if such an appeal has been filed, it has finally been resolved and has resulted  
2 in an affirmation of the Final Approval Order and Judgment, or (c) the Court, following the  
3 resolution of the appeal, enters a further order or orders approving settlement on the terms set forth  
4 herein, and either no further appeal is taken from such order(s) or any such appeal results in  
5 affirmation of such order(s). Neither the pendency of the Fee and Cost Application, nor any appeal  
6 pertaining solely to a decision on the Fee and Cost Application, shall in any way delay or preclude  
7 the Final Approval Order and Judgment from becoming Final.

8 13. "Final Approval Hearing" means the hearing scheduled to take place at least one-  
9 hundred and twenty (120) days after the date of entry of the Preliminary Approval Order at which  
10 the Court shall: (a) determine whether to grant final approval to this Settlement Agreement and to  
11 certify the Settlement Class; (b) consider any timely objections to this Settlement and all responses  
12 thereto; and (c) rule on the Fee and Cost Application.

13 14. "Final Approval Order and Judgment" means the order, substantially in the form of  
14 Exhibit B attached hereto, in which the Court grants final approval of this Settlement Agreement,  
15 certifies the Settlement Class, and authorizes the entry of a final judgment and dismissal of the  
16 Action with prejudice.

17 15. Individual Released Claims means any and all of the Class Representatives'  
18 actions, causes of action, claims, demands, liabilities, obligations, fees, costs, sanctions,  
19 proceedings, and/or rights of any nature and description whatsoever, including, without limitation,  
20 violations of any state or federal statutes, rules or regulations, or principles of common law, whether  
21 liquidated or unliquidated, known or unknown, in law or in equity, whether or not concealed or  
22 hidden, that are based on, arise out of, or are related to Class Representatives' personal purchase,  
23 use, and consumption of any products manufactured, sold, or otherwise distributed by USPlabs,  
24 including but not limited to any claims relating to (i) physical, mental, or emotional injury or  
25 disability; (ii) the manufacturing, marketing, sale, labeling and/or advertising of any products  
26 manufactured, sold, or otherwise distributed by USPlabs; and (iii) the lawfulness, safety, or efficacy  
27 of any products manufactured, sold, or otherwise distributed by USPlabs.

28 16. "Jack3d" shall mean USPlabs' "Jack3d" dietary supplement product.

1 17. “Notice” shall mean Publication Notice.

2 18. “Notice Provider” means Epiq Legal Noticing and Digital Settlement LLC for  
3 purposes of internet and publication notice.

4 19. “Notice Response Deadline” means the deadline for all members of the Settlement  
5 Class to respond to the Notice, which shall be twenty-one (21) days prior to the Final Approval  
6 Hearing.

7 20. “OxyELITE Pro” shall mean USPlabs’ “OxyELITE Pro” dietary supplement  
8 product.

9 21. “Participating Claimant” means a Settlement Class Member who submits a  
10 Qualifying Settlement Claim Form in response to the Notice.

11 22. “Parties” means Class Representatives Hogan, Giasone, Bodor, Manning, Haro,  
12 Sherrill, Pacheco, Janovick, and Defendant USPlabs.

13 23. “Person” means any natural person, firm, corporation, unincorporated association,  
14 partnership, or other form of legal entity or government body, including its agents and  
15 representatives.

16 24. “Preliminary Approval Order” means the order, substantially in the form of Exhibit  
17 A attached hereto, in which the Court grants its preliminary approval to this Settlement Agreement  
18 and preliminarily certifies the Settlement Class, authorizes dissemination of Notice to the  
19 Settlement Class, and appoints the Settlement Administrator and Notice Provider.

20 25. “Publication Notice” means the long-form and short-form notices, substantially in  
21 the form of Exhibits C and D attached hereto. The long-form Publication Notice and the short-form  
22 Publication Notice will be published as set forth in the Preliminary Approval Order, pursuant to  
23 California Rule of Court 3.771(b).

24 26. A “Qualifying Settlement Claim Form” shall mean a Settlement Claim Form that: (a)  
25 is fully completed, properly executed and timely returned to the Settlement Administrator, *i.e.*,  
26 returned with a postmark on or before the Notice Response Deadline; and (b) confirms that the  
27 Settlement Class Member purchased one or more of the USPlabs Products identified in the Claim  
28 Form during the Class Period.

1           27.    “Related Disputes” means the separate actions threatened by Bodor, Manning, and  
2 Janovick against USPlabs.

3           28.    “Released Parties” means USPlabs and its past and present officers, directors,  
4 employees, stockholders, investors, owners, agents, representatives, attorneys, administrators,  
5 successors, subsidiaries, assigns, affiliates, joint-ventures, partners, members, divisions,  
6 predecessors, spokespersons, public relations firms, advertising and production agencies,  
7 manufacturers, distributors, suppliers, wholesalers, retailers, vendors, licensees and licensors.

8           29.    “Releasing Parties” means all Settlement Class Members.

9           30.    “Request for Exclusion” means a valid request for exclusion from a Settlement Class  
10 Member. To be valid, a request for exclusion must (a) be submitted by the Settlement Class  
11 Member; (b) be submitted to the Settlement Administrator and postmarked by a date not later than  
12 twenty-one (21) days before the Final Approval Hearing; (c) contain the submitter’s name, address  
13 and telephone number; and (d) otherwise comply with the instructions set forth in the Notice.

14           31.    “Settlement Administrator” means the third-party agent(s) or administrator(s) agreed  
15 to by the Parties and appointed by the Court. The Parties agree that Epiq Systems, Inc. shall be  
16 retained as Settlement Administrator.

17           32.    “Settlement Agreement,” “Settlement,” or “Agreement” means this Stipulation and  
18 Agreement of Settlement, including the attached exhibits.

19           33.    “Settlement Claim” or “Claim” means a claim for reimbursement submitted by a  
20 Settlement Class Member to the Settlement Administrator as provided in this Agreement.

21           34.    “Settlement Claim Form” or “Claim Form” means a claim form, in the form to be  
22 determined by the Settlement Administrator, that a Settlement Class Member seeking  
23 reimbursement must submit to the Settlement Administrator as provided in this Agreement.

24           35.    “Settlement Class” means, collectively, all persons who purchased for personal  
25 consumption, and not for re-sale, one or more of the USPlabs Products in the United States during  
26 the Class Period. Excluded from the Settlement Class are any officers, directors, or employees of  
27 USPlabs, and the immediate family member of any such person, as well as any individual who  
28



1 received remuneration from USPlabs in connection with that individual's use or endorsement of the  
2 USPlabs Products. Also excluded is any judge who may preside over this case.

3 36. "Settlement Class Member" or "Class Member" means any member of the  
4 Settlement Class who does not submit a timely and valid Request for Exclusion.

5 37. "USPlabs" means USPlabs, LLC.

6 38. "USPlabs' Counsel" means Arnold & Porter LLP.

7 39. "USPlabs Products" means, collectively, the USPlabs dietary supplements  
8 OxyELITE Pro and Jack3d.

9 40. "Valid Claim" means a claim for reimbursement submitted by a Settlement Class  
10 Member that satisfies all the criteria for submission of a Qualifying Settlement Claim Form.

### 11 **ARTICLE III – SETTLEMENT CLASS RELIEF**

12 In consideration of a full, complete, and final settlement of the Action, and the Releases in  
13 Article VII below, and subject to the Court's approval, the Parties agree to the following relief:

#### 14 1. Common Fund

15 The amount of the Common Fund is Two Million Dollars (\$2,000,000.00). In no event shall  
16 USPlabs' monetary liability under this Settlement Agreement exceed the amount of the Common  
17 Fund. The Common Fund shall be funded in two parts, as follows:

- 18 • No later than three (3) business days after entry of the Preliminary Approval Order,  
19 USPlabs shall make an initial deposit of Two-Hundred and Fifty Thousand Dollars  
20 (\$250,000.00) into an escrow account with a mutually agreeable escrow institution,  
21 Bank of America, to be held for safe keeping.
- 22 • No later than thirty (30) business days after entry of the Preliminary Approval Order,  
23 USPlabs shall deposit One Million Seven-Hundred and Fifty Thousand Dollars  
24 (\$1,750,000.00) into the above-referenced escrow account, to be held for safe  
25 keeping.

26 The amounts deposited by USPlabs into the Common Fund are to be released from escrow for (a)  
27 payment of notice and administrative costs directly to the Notice Provider and Settlement  
28 Administrator at the time they are incurred, and (b) for funding the Settlement only upon the

1 Court's final approval of the Settlement Agreement. If for some reason the Court does not approve  
2 the Settlement Agreement, the entirety of the Common Fund, minus expenses actually incurred for  
3 notice and administrative costs, shall be returned to USPlabs within fifteen (15) business days of the  
4 Court's order denying Final Approval.

5 2. Distribution of the Common Fund

6 The Aggregate Fees, Costs, and Expenses shall be paid from the Common Fund consistent  
7 with the provisions of Article VI of this Settlement Agreement. The remainder of the Common  
8 Fund shall be distributed as set forth herein. Distribution of funds from the Common Fund to the  
9 Settlement Class shall commence as soon as practicable after the Effective Date, but in no event  
10 later than thirty (30) days after the Effective Date.

11 3. Settlement Class Member Claims

12 a. Relief to the Settlement Class

13 The Common Fund, less all Aggregate Fees, Costs and Expenses, shall be available to pay  
14 Valid Claims submitted by Settlement Class Members who purchased the USPlabs Products for  
15 personal consumption, and not for re-sale, during the Class Period. Settlement Class Members who  
16 submit a Claim with purchase receipts documenting proof of purchase will be refunded the full  
17 amount documented, with no limit on the number of bottles of the USPlabs Products refunded.  
18 Settlement Class Members who submit a Claim without purchase receipts will be entitled to  
19 reimbursement of \$30.00 per bottle of OxyELITE Pro purchased and \$20.00 per bottle of Jack3d  
20 purchased, up to a maximum refund of \$150. All Settlement Class Members who submit a Claim  
21 must provide an affirmation, signed under penalty of perjury, that the Class Member personally  
22 purchased and consumed one or more of the USPlabs Products during the Class Period. Settlement  
23 Class Members who submit a Claim without purchase receipts will also be required to provide  
24 information relating to the purchase of the USPlabs Products sufficient to satisfy the reasonable  
25 requests of the Settlement Administrator for the purpose of determining whether the Settlement  
26 Class Member has made a Valid Claim, including where the USPlabs Products were purchased, the  
27 quantity purchased, and the approximate purchase date.

1                   b.       Claim Forms

2                   Settlement Class Members will be able to obtain a Settlement Claim Form by calling the  
3 toll-free number established for purposes of administering this Agreement, by requesting one by  
4 mail at the address established by the Settlement Administrator, or by downloading the form from  
5 the Internet website established by the Settlement Administrator. The Claim Form shall include  
6 instructions for the submission process. Settlement Class Members may submit a Claim Form  
7 online or by mail to the Settlement Administrator at the address provided.

8                   c.       Waiver

9                   If a Qualifying Settlement Claim Form is not actually received by the Settlement  
10 Administrator from a Settlement Class Member via the internet or with a postmark on or before the  
11 Notice Response Deadline, then that Settlement Class Member will be deemed to have forever  
12 waived his or her right to be a Participating Claimant and to receive payment under this Settlement.  
13 As long as they do not properly submit a Request for Exclusion, Settlement Class Members who do  
14 not become Participating Claimants shall be deemed Members of the Settlement Class and shall be  
15 subject to the Judgment. Only Participating Claimants shall be entitled to payment pursuant to the  
16 Judgment.

17                   4.       Insufficient or Excess Funds

18                   If the aggregate value of Valid Claims submitted by Settlement Class Members exceeds the  
19 amount remaining in the Common Fund after payment of all Aggregate Fees, Costs, and Expenses,  
20 then the amount of reimbursement per bottle will be adjusted downward on a per bottle basis.

21                   If the aggregate value of Valid Claims submitted by Settlement Class Members is less than  
22 the amount remaining in the Common Fund after payment of all Aggregate Fees, Costs, and  
23 Expenses, Settlement Class Members will receive a pro rata addition to the amounts to be refunded  
24 to them, up to the amount of \$300.00 per Settlement Class Member. In the event that, even after a  
25 pro rata addition to the amounts refunded to Settlement Class Members, the aggregate value of  
26 Valid Claims is still less than the amount remaining in the Common Fund after payment of all  
27 Aggregate Fees, Costs, and Expenses, then the unclaimed balance of the Common Fund shall be  
28 distributed *cy pres* to a charitable organization that benefits the Settlement Class, to be mutually

1 agreed on by the Parties subject to Court approval. Any remaining funds shall be paid out of the  
2 Common Fund not later than one-hundred and eighty (180) days after the Effective Date, provided  
3 that the Effective Date occurs.

4 5. Equitable Relief and Future Conduct by USPlabs

5 To the extent USPlabs still markets or sells the USPlabs Products in the United States after  
6 the Effective Date, USPlabs shall revise the labels on USPlabs Products manufactured ninety (90)  
7 days after the Effective Date to conform substantially to the exemplar labels attached as Exhibit F,  
8 to make the warning statements on them larger and more easily understood. Nothing in this  
9 provision shall prevent USPlabs from making changes to the USPlabs Products labels not  
10 inconsistent with the foregoing, or as necessary to comply with governmental or regulatory  
11 requirements.

12 **ARTICLE IV – NOTICE AND REQUESTS FOR EXCLUSION**

13 1. Publication Notice

14 Publication Notice to the Settlement Class shall be provided in the forms approved by the  
15 Court in the Preliminary Approval Order, in that media as set forth in the Preliminary Approval  
16 Order. The Publication Notice shall be substantially in the same forms as the exemplars submitted  
17 as Exhibits C and D. The Publication Notice shall be published promptly after entry of the  
18 Preliminary Approval Order on dates to be agreed upon by the Parties so as to provide the best  
19 practical notice to the Settlement Class. The Parties, the Settlement Administrator and the Notice  
20 Provider shall use best efforts to cause the Publication Notice to commence online at an internet  
21 website to be established by the Settlement Administrator within thirty (30) days after the date of  
22 entry of the Preliminary Approval Order. Publication Notice shall also commence in print in a  
23 large-circulation nationwide sports magazine within thirty (30) days after the date of entry of the  
24 Preliminary Approval Order. Publication Notice shall extend to additional print magazines within  
25 seventy-five (75) days after the date of entry of the Preliminary Approval Order. The online and  
26 print publication of the Publication Notice shall be administered by the Settlement Administrator  
27 and the Notice Provider. The cost of publishing the Publication Notice shall be paid for out of the  
28 Common Fund, subject to the terms hereof.

1           2.     Declarations Of Compliance

2           The Settlement Administrator and the Notice Provider shall prepare declarations attesting to  
3 compliance with the publication requirements set forth above. Such declarations shall be provided  
4 to Class Counsel and USPlabs' Counsel and filed with the Court no later than ten (10) days prior to  
5 the Final Approval Hearing.

6           3.     Best Notice Practicable

7           The Parties agree, and the Preliminary Approval Order shall state, that compliance with the  
8 procedures described in this Article is the best notice practicable under the circumstances and shall  
9 constitute due and sufficient notice to the Settlement Class of the pendency of the Action,  
10 certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Approval  
11 Hearing, and shall satisfy the requirements of the California Rules of Court, the California Code of  
12 Civil Procedure, the Constitution of the State of California, the United States Constitution, and any  
13 other applicable law.

14          4.     Report On Requests For Exclusion and Valid Claims

15          Not later than ten (10) days before the Final Approval Hearing, the Settlement Administrator  
16 shall prepare and deliver to Class Counsel, who shall file it with the Court, and USPlabs' Counsel, a  
17 report stating: (1) the total number of Persons that have submitted timely and valid Requests for  
18 Exclusion from the Settlement Class, and the names of such Persons; and (2) the total number of  
19 Persons that have submitted timely Valid Claims, and the aggregate value of those Valid Claims.  
20 Any Person that has submitted a timely and valid Request for Exclusion will not be entitled to  
21 receive any relief under this Settlement Agreement.

22          5.     Inquiries From Settlement Class Members

23          It shall be the responsibility of Class Counsel to establish procedures for receiving and  
24 responding to all inquiries from Settlement Class Members with respect to this Settlement. USPlabs  
25 and USPlabs' Counsel may respond, but are not required to respond, to such inquiries.  
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1 **ARTICLE V – COURT APPROVAL OF SETTLEMENT**

2 1. Preliminary Approval

3 As soon as practicable after the execution of this Settlement Agreement, Class Counsel shall  
4 apply for entry of the Preliminary Approval Order in the form of Exhibit A hereto. The Preliminary  
5 Approval Order shall include provisions: (a) preliminarily certifying the Settlement Class for  
6 settlement purposes only; (b) preliminarily approving this Settlement and finding this Settlement  
7 sufficiently fair, reasonable and adequate to allow Notice to be disseminated to the Settlement  
8 Class; (c) approving the form, content, and manner of the Notice; (d) setting a schedule for  
9 proceedings with respect to final approval of this Settlement; (e) providing that, pending entry of a  
10 Final Approval Order and Judgment, no Settlement Class Member (either directly, in a  
11 representative capacity, or in any other capacity) shall commence or continue any action against the  
12 Released Parties asserting any of the Class Released Claims; and (f) staying the Action, other than  
13 such proceedings as are related to this Settlement.

14 2. Objections To Settlement

15 Any Settlement Class Member wishing to object to or to oppose the approval of this  
16 Settlement and/or the Fee and Cost Application shall file a written objection (with a statement of  
17 reasons) with the Court and serve it on the Parties at least twenty-one (21) days before the date of  
18 the Final Approval Hearing. Any Settlement Class Member that fails to do so shall be foreclosed  
19 from making such objection or opposition. Hogan, Giasone, Bodor, Manning, Haro, Sherrill,  
20 Pacheco, and Janovick will file with the Court their brief in support of final settlement approval, in  
21 support of final certification of the Settlement Class, and in response to any objections at least seven  
22 (7) days before the date of the Final Approval Hearing. Any Settlement Class Member that fails to  
23 file a timely written objection and to appear at the final approval hearing shall have no right to file  
24 an appeal relating to the approval of this Settlement.

25 3. Final Approval Hearing

26 The Parties shall request that the Court, on the date set forth in the Preliminary Approval  
27 Order, or on such other date that the Court may set, conduct a Final Approval Hearing to:

28 (a) determine whether to grant final approval to this Settlement Agreement and to certify the

1 Settlement Class; (b) consider any timely objections to this Settlement and the Parties' responses to  
2 such objections; and (c) rule on the Fee and Cost Application. At the Final Approval Hearing, the  
3 Parties shall ask the Court to give final approval to this Settlement Agreement. If the Court grants  
4 final approval to this Settlement Agreement, then the Parties shall ask the Court to enter a Final  
5 Approval Order and Judgment, substantially in the form of Exhibit B attached hereto, which  
6 approves this Settlement, certifies the Settlement Class, and authorizes entry of a final judgment.

7 4. Disapproval, Cancellation, Termination, Or Nullification Of Settlement

8 a. This Settlement Agreement shall terminate automatically if either (i) the  
9 Court denies preliminary approval or final approval to this Settlement Agreement, or (ii) the Final  
10 Approval Order and Judgment does not become Final by reason of a higher court reversing final  
11 approval by the Court, and the Court thereafter declining to enter a further order or orders approving  
12 settlement on the terms set forth herein.

13 b. USPlabs shall have the right to terminate this Settlement Agreement if, prior  
14 to the date of the Final Approval Order and Judgment, the total number of Persons that have  
15 submitted timely and valid Requests for Exclusion from the Settlement Class constitutes greater  
16 than five hundred (500). If USPlabs elects to terminate this Settlement Agreement under this  
17 paragraph, USPlabs must provide written notice to the other Parties' counsel on or before the date  
18 of the Final Approval Order and Judgment. Such written notice shall be provided by hand delivery  
19 or mail to the Parties' counsel.

20 c. If this Settlement Agreement is terminated pursuant to its terms, then: (i) this  
21 Settlement Agreement shall be rendered null and void; (ii) this Settlement Agreement and all  
22 negotiations and proceedings relating hereto shall be of no force or effect, and without prejudice to  
23 the rights of the Parties; and (iii) all Parties shall be deemed to have reverted to their respective  
24 status in the Action, the Dismissed Actions, or Related Disputes as of the date and time immediately  
25 preceding the execution of this Settlement Agreement and, except as otherwise expressly provided,  
26 the Parties shall stand in the same position and shall proceed in all respects as if this Settlement  
27 Agreement and any related orders had never been executed, entered into, or filed, except that the  
28

1 Parties shall not seek to recover from one another any costs incurred in connection with this  
2 Settlement.

3 **ARTICLE VI – ADMINISTRATIVE EXPENSES, ATTORNEYS’ FEES, COSTS**

4 1. Costs Of Notice

5 All costs of providing the Notice as provided herein, including the costs of publishing the  
6 Notice, shall be paid for out of the Common Fund, subject to the terms hereof.

7 2. Costs Of Administering Settlement

8 All costs of administering this Settlement, including all fees of the Settlement Administrator  
9 and the costs of generating and mailing any checks to be issued as part of this Settlement, shall be  
10 paid for out of the Common Fund at the time such administrative costs are incurred. In the event  
11 that this Settlement Agreement is terminated pursuant to its terms, USPlabs shall bear any costs of  
12 administering this Settlement already incurred.

13 3. Attorneys’ Fees And Costs

14 Hogan, Giasone, Bodor, Manning, Haro, Sherrill, Pacheco, Janovick, and/or Class Counsel  
15 will make a Fee and Cost Application to be heard at the Final Approval Hearing seeking an award  
16 of attorneys’ fees and costs consistent with California law. Attorneys’ fees and costs that are  
17 approved by the Court shall be paid out of the Common Fund no later than fifteen (15) days after  
18 the Effective Date, and only in the event that the Effective Date occurs. Payments under this  
19 provision shall be made to Kirtland & Packard LLP State Bar Trust. Class Counsel shall be solely  
20 responsible for further distributing any payments made under this provision.

21 4. Incentive Award

22 Hogan, Giasone, Bodor, Manning, Haro, Sherrill, Pacheco, Janovick, and/or Class Counsel  
23 on their behalf, may make an application to be heard at the Final Approval Hearing for incentive  
24 awards to be paid out of the Common Fund in an amount not to exceed \$1,000 per individual Class  
25 Representative. Incentive awards shall be paid out of the Common Fund as approved by the Court  
26 no later than fifteen (15) days after the Effective Date, and only in the event that the Effective Date  
27 occurs. These payments shall be compensation and consideration for the efforts of Hogan, Giasone,  
28 Bodor, Manning, Haro, Sherrill, Pacheco, and Janovick as the Class Representatives in the Action.



1           5.     Effect On Settlement

2           The Parties agree that the rulings of the Court regarding the amount of attorneys' fees or  
3 costs and any incentive award, and any claim or dispute relating thereto, will be considered by the  
4 Court separately from the remaining matters to be considered at the Final Approval Hearing as  
5 provided for in this Settlement Agreement and any determinations in that regard will be embodied  
6 in a separate order. Any order or proceedings relating to the amount of attorneys' fees or incentive  
7 award, including any appeals from or modifications or reversals of any order related thereto, shall  
8 not operate to modify, reverse, terminate, or cancel the Settlement Agreement, affect the releases  
9 provided for in the Settlement Agreement, or affect whether the Final Approval Order and  
10 Judgment becomes Final as defined herein.

11                           **ARTICLE VII – RELEASES UPON EFFECTIVE DATE**

12           1.     Binding and Exclusive Nature of Settlement Agreement

13           On the Effective Date, if it occurs, the Parties and each and every Settlement Class Member  
14 shall be bound by this Settlement Agreement and shall have recourse exclusively to the benefits,  
15 rights, and remedies provided hereunder. No other action, demand, suit or other claim may be  
16 pursued against the Released Parties with respect to the Class Released Claims.

17           2.     Class Releases

18           On the Effective Date, if it occurs, the Releasing Parties shall be deemed to have, and by  
19 operation of this Settlement Agreement shall have, fully, finally and forever released, relinquished  
20 and discharged the Released Parties from any and all of the Class Released Claims.

21           3.     Class Representatives' Individual Releases

22           On the Effective Date, if it occurs, the Class Representatives shall be deemed to have, and  
23 by operation of this Settlement Agreement shall have, fully, finally and forever released,  
24 relinquished and discharged the Released Parties from any and all of the Class Representatives'  
25 Individual Released Claims.

26           4.     Stay Of The Action

27           The Parties agree to request that the Court, in connection with Preliminary Approval, issue  
28 an immediate stay of the Action.

1           5.       Waiver of Unknown Claims

2           On the Effective Date, if it occurs, the Releasing Parties shall be deemed to have, and by  
3 operation of this Settlement Agreement shall have, with respect to the subject matter of the Class  
4 Released Claims and Individual Released Claims, expressly waived the benefits of any statutory  
5 provisions or common law rule that provides, in sum or substance, that a general release does not  
6 extend to claims which the party does not know or suspect to exist in its favor at the time of  
7 executing the release, which if known by it, would have materially affected its settlement with any  
8 other party. In particular, but without limitation, the Releasing Parties waive the provisions of  
9 California Civil Code § 1542 (or any like or similar state or federal statute or common law  
10 doctrine), and do so understanding the significance of that waiver. Section 1542 provides:

11                   **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
12                   **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**  
13                   **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
14                   **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**  
15                   **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**  
16                   **HER SETTLEMENT WITH THE DEBTOR.**

17           The releases provided for in this Settlement Agreement are limited to the Class Released Claims as  
18 defined in Article II (5) above and the Individual Released Claims as defined in Article II (15)  
19 above.

20           6.       Assumption of Risk

21           In entering into this Settlement Agreement, each of the Parties assumes the risk of any  
22 mistake of fact or law. If either Party should later discover that any fact which the Party relied upon  
23 in entering this Settlement Agreement is not true, or that the Party's understanding of the facts or  
24 law was incorrect, the Party shall not be entitled to modify, reform, or set aside this Settlement  
25 Agreement, in whole or in part, by reason thereof. The Parties agree that at the time this Settlement  
26 Agreement was executed, there were unsettled issues of law, and the Parties agree to honor this  
27 Agreement regardless of developments in the law after execution; specifically, the Class  
28 Representatives and Class Counsel recognize and agree that, given these uncertainties in the law,

1 the Class Representatives and Class Counsel are receiving valuable consideration for the settlement  
2 of the Action at this time and per the terms of this Agreement. The Parties will advocate for Court  
3 approval of this Settlement Agreement.

#### 4 **ARTICLE VIII – LIMITATIONS ON USE OF SETTLEMENT AGREEMENT**

##### 5 1. No Admission

6 Neither the acceptance by USPlabs of the terms of this Settlement Agreement nor any of the  
7 related negotiations or proceedings constitutes an admission with respect to the merits of the claims  
8 alleged in the Complaint, the validity of any claims that could have been asserted by any of the  
9 Settlement Class Members in the Complaint, or the liability of USPlabs in the Action, the  
10 Dismissed Actions, or the Related Disputes. USPlabs specifically denies any liability or  
11 wrongdoing of any kind associated with the claims alleged in the Action, the Dismissed Actions,  
12 and the Related Disputes. Neither the acceptance by Hogan, Giasone, Bodor, Manning, Haro,  
13 Sherrill, Pacheco, and/or Janovick of the terms of this Settlement Agreement, nor any of the related  
14 negotiations or proceedings constitutes an admission with respect to the merits of the claims alleged  
15 in the Action, the Dismissed Actions, or the Related Disputes.

##### 16 2. Limitations on Use

17 This Settlement Agreement shall not be used, offered, or received into evidence in the  
18 Action for any purpose other than to enforce, to construe, or to finalize the terms of the Settlement  
19 Agreement or to obtain the preliminary and final approval by the Court of the terms of the  
20 Settlement Agreement. Neither this Settlement Agreement nor any of its terms shall be offered or  
21 received into evidence in any other action or proceeding except that USPlabs may file this  
22 Settlement Agreement or the Judgment in any action that may be brought against a Released Party  
23 in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel,  
24 release, good faith settlement, judgment bar, reduction, or any other theory of claim preclusion or  
25 issue preclusion or similar defense or counterclaim.

##### 26 3. No Public Statements Without Agreement of the Parties

27 The Parties and their counsel agree that no Party or counsel who is a signatory to this  
28 Settlement Agreement will comment publicly in any form regarding this Settlement or litigation

1 without prior approval of all Parties and counsel, other than to issue a press release substantially in  
2 the form of Exhibit E attached hereto. Any disputes among the Parties regarding publicity  
3 associated with this Settlement shall be submitted to this court for expedited review and  
4 determination.

## 5 **ARTICLE IX – MISCELLANEOUS PROVISIONS**

### 6 1. No Assignment

7 Each Party represents, covenants, and warrants that she or it has not directly or indirectly  
8 assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any  
9 liability, claim, demand, cause of action, or rights that she or it herein releases.

### 10 2. Binding On Assigns

11 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and  
12 their respective heirs, trustees, executors, successors, and assigns.

### 13 3. Captions

14 Titles or captions contained herein are inserted as a matter of convenience and for reference,  
15 and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any  
16 provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

### 17 4. Settlement Class Member Signatures

18 It is agreed that, because the Settlement Class Members are so numerous, it is impractical to  
19 have each Settlement Class Member execute this Settlement Agreement. The Notice will advise all  
20 Settlement Class Members of the binding nature of the Releases and of the remainder of this  
21 Settlement Agreement, and in the absence of a valid and timely Request for Exclusion, such Notice  
22 shall have the same force and effect as if each Settlement Class Member executed this Settlement  
23 Agreement.

### 24 5. Construction

25 The Parties agree that the terms and conditions of this Settlement Agreement are the result  
26 of arms-length negotiations between the Parties and that this Settlement Agreement shall not be  
27 construed in favor of or against any Party by reason of the extent to which any Party, or his or its  
28 counsel, participated in the drafting of this Settlement Agreement.

1           6.     Counterparts

2           This Settlement Agreement and any amendments hereto may be executed in one or more  
3 counterparts, and either Party may execute any such counterpart, each of which when executed and  
4 delivered shall be deemed to be an original and both of which counterparts taken together shall  
5 constitute but one and the same instrument. A facsimile or portable data file (PDF) signature shall  
6 be deemed an original for all purposes.

7           7.     Governing Law

8           Construction and interpretation of the Settlement Agreement shall be determined in  
9 accordance with the laws of the State of California, without regard to the choice-of-law principles  
10 thereof.

11          8.     Integration Clause

12          This Settlement Agreement, including the exhibits referred to herein, which form an integral  
13 part hereof, contains the entire understanding of the Parties with respect to the subject matter  
14 contained herein. There are no promises, representations, warranties, covenants, or undertakings  
15 governing the subject matter of this Settlement Agreement other than those expressly set forth in  
16 this Settlement Agreement. This Settlement Agreement supersedes all prior agreements and  
17 understandings among the Parties with respect to the settlement of the Action. This Settlement  
18 Agreement may not be changed, altered or modified, except in a writing signed by the Parties and  
19 approved by the Court. This Settlement Agreement may not be discharged except by performance  
20 in accordance with its terms or by a writing signed by the Parties.

21          9.     Jurisdiction

22          The Court shall retain jurisdiction, after entry of the Final Approval Order and Judgment,  
23 with respect to enforcement of the terms of this Settlement, and all Parties and Settlement Class  
24 Members submit to the exclusive jurisdiction of the Court with respect to the enforcement of this  
25 Settlement and any dispute with respect thereto.

26          10.    No Collateral Attack

27          This Settlement Agreement shall not be subject to collateral attack by any Settlement Class  
28 Member at any time on or after the Effective Date. Such prohibited collateral attacks shall include,

1 but shall not be limited to, claims that a Settlement Class Member's claim was improperly denied,  
2 that the payment to a Settlement Class Member was improperly calculated, and/or that a Settlement  
3 Class Member failed to receive timely notice of the Settlement Agreement.

4 11. Parties' Authority

5 The signatories hereto represent that they are fully authorized to enter into this Settlement  
6 Agreement and bind the Parties to the terms and conditions hereof.

7 12. Receipt Of Advice Of Counsel

8 The Parties acknowledge, agree, and specifically warrant to each other that they have read  
9 this Settlement Agreement, have received legal advice with respect to the advisability of entering  
10 into this Settlement, and fully understand its legal effect.

11 13. Waiver Of Compliance

12 Any failure of any Party to comply with any obligation, covenant, agreement, or condition  
13 herein may be expressly waived in writing, to the extent permitted under applicable law, by the  
14 Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A  
15 waiver or failure to insist upon compliance with any representation, warranty, covenant, agreement,  
16 or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other  
17 failure.

18 14. Settlement Conditioned on Certain Matters

19 This entire Settlement Agreement is contingent upon the Parties reaching agreement on the  
20 contents of the exhibits and ancillary agreements hereto.

21 [SIGNATURES ON THE FOLLOWING PAGE]  
22  
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1 Dated: July 10, 2012

2  
3 By: Lonnie Clark  
4 LONNIE CLARK, CFO, on behalf of  
5 Defendant USPlabs, LLC

6 Dated: July \_\_, 2012

7 By: \_\_\_\_\_  
8 GOVINDA HOGAN, on behalf of herself  
9 and the proposed class

10 By: \_\_\_\_\_  
11 CATHERINE GIASONE, on behalf of  
12 herself and the proposed class

13 By: \_\_\_\_\_  
14 HEATHER BODOR, on behalf of  
15 herself and the proposed class

16 By: \_\_\_\_\_  
17 JAMES MANNING, on behalf of  
18 himself and the proposed class

19 By: \_\_\_\_\_  
20 ADRIAN HARO, on behalf of  
21 himself and the proposed class

22 By: \_\_\_\_\_  
23 JEFFREY SHERRILL, on behalf of  
24 himself and the proposed class

25 By: \_\_\_\_\_  
26 JOHNNIE PACHECO, on behalf of  
27 himself and the proposed class

28 By: \_\_\_\_\_  
ISABELLA JANOVICK, on behalf of  
herself and the proposed class

1 Dated: July \_\_, 2012

2

3


By: \_\_\_\_\_  
LONNIE CLARK, CFO, on behalf of  
Defendant USPlabs, LLC

4

Dated: July 16 2012


5

6

By:  \_\_\_\_\_  
GOVINDA HOGAN, on behalf of herself  
and the proposed class

7


8

By:  \_\_\_\_\_  
CATHERINE GIASONE, on behalf of  
herself and the proposed class

9

10


11

By:  \_\_\_\_\_  
HEATHER BODOR, on behalf of  
herself and the proposed class

12


13

14

By:  \_\_\_\_\_  
JAMES MANNING, on behalf of  
himself and the proposed class


15

16

By:  \_\_\_\_\_  
ADRIAN HARO, on behalf of  
himself and the proposed class

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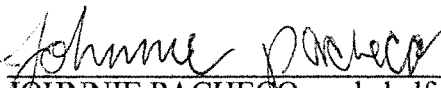
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By:  \_\_\_\_\_  
JEFFREY SHERRILL, on behalf of  
himself and the proposed class

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By:  \_\_\_\_\_  
JOHNNIE PACHECO, on behalf of  
himself and the proposed class

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By:  \_\_\_\_\_  
ISABELLA JANOVICK, on behalf of  
herself and the proposed class

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28



1 APPROVED AS TO FORM:

2 Dated: July 10, 2012

ARNOLD & PORTER LLP

3  
4  
5 By:   
ANGEL A. GARGANTA

6 Attorneys for Defendant  
7 USPlabs, LLC

8  
9 Dated: July \_\_, 2012

KIRTLAND & PACKARD LLP

10  
11  
12 By: \_\_\_\_\_  
MICHAEL LOUIS KELLY

13 Attorneys for Plaintiffs Hogan, Giasone,  
14 Pacheco, Bodor, Manning, Haro, Sherrill,  
Janovick, and the proposed class

15 Dated: July \_\_, 2012

NEWPORT TRIAL GROUP

16  
17  
18 By: \_\_\_\_\_  
SCOTT J. FERRELL

19 Attorneys for Plaintiffs Hogan, Giasone,  
20 Pacheco, Bodor, Manning, Haro, Sherrill,  
21 Janovick, and the proposed class

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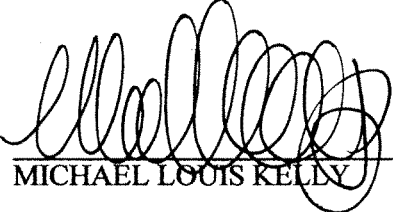
Dated: July \_\_, 2012

ARNOLD & PORTER LLP

By: \_\_\_\_\_  
ANGEL A. GARGANTA  
Attorneys for Defendant  
USPlabs, LLC

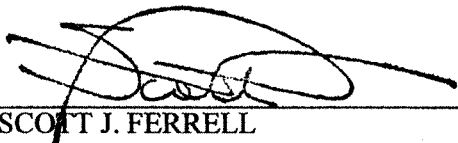
Dated: July 20, 2012

KIRTLAND & PACKARD LLP

By:  \_\_\_\_\_  
MICHAEL LOUIS KELLY  
Attorneys for Plaintiffs Hogan, Giasone,  
Pacheco, Bodor, Manning, Haro, Sherrill,  
Janovick, and the proposed class

Dated: July 20, 2012

NEWPORT TRIAL GROUP

By:  \_\_\_\_\_  
SCOTT J. FERRELL  
Attorneys for Plaintiffs Hogan, Giasone,  
Pacheco, Bodor, Manning, Haro, Sherrill,  
Janovick, and the proposed class

# Exhibit A

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

GOVINDA HOGAN, CATHERINE  
GIASONE, HEATHER BODOR, JAMES  
MANNING, ADRIAN HARO, JEFFREY  
SHERRILL, JOHNNIE PACHECO, and  
ISABELLA JANOVICK, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

USPlabs, LLC, a Texas Limited Liability  
Company, and DOES 1-25, inclusive,

Defendants.

CASE NO. BC486925

Assigned to the Hon. William F. Highberger  
Dept 307

**CLASS ACTION**

**[PROPOSED] ORDER RE:  
PRELIMINARY APPROVAL OF  
PROPOSED SETTLEMENT**

1           WHEREAS, Plaintiffs in the above-captioned action, Govinda Hogan, Catherine  
2 Giasone, Heather Bodor, James Manning, Adrian Haro, Jeffrey Sherrill, Johnnie Pacheco, and  
3 Isabella Janovick, and Defendant USPlabs, LLC (“USPlabs” or “Defendant”) have reached a  
4 proposed settlement and compromise of the disputes between them in the above action, which is  
5 embodied in the Settlement Agreement filed with the Court;

6           WHEREAS, the Parties have applied to the Court for preliminary approval of the  
7 proposed Settlement of the Action, the terms and conditions of which are set forth in the  
8 Stipulation and Agreement of Settlement (the “Settlement Agreement”);

9           AND NOW, the Court, having read and considered the Settlement Agreement and  
10 accompanying documents and the Motion For Preliminary Settlement Approval and Supporting  
11 Papers, and the Parties to the Settlement Agreement having consented to the entry of this order,  
12 and all capitalized terms used herein having the meaning defined in the Settlement Agreement, IT  
13 IS HEREBY ORDERED AS FOLLOWS:

- 14           1.       The Court, for purposes of this Order, adopts all defined terms as set forth  
15 in the Settlement Agreement.
- 16           2.       Subject to further consideration by the Court at the time of the Final Approval  
17 Hearing, the Court preliminarily approves the Settlement as fair, reasonable and adequate to the  
18 Settlement Class, as falling within the range of possible final approval, and as meriting  
19 submission to the Settlement Class for its consideration.
- 20           3.       For purposes of the Settlement only, the Court certifies the Settlement Class,  
21 which shall consist of the following: All persons who purchased for personal consumption, and  
22 not for re-sale, one or more of the USPlabs Products in the United States during the Class Period.  
23 Excluded from the Settlement Class are any officers, directors, or employees of USPlabs, and the  
24 immediate family member of any such person, as well as any individual who received  
25 remuneration from USPlabs in connection with that individual’s use or endorsement of the  
26 USPlabs Products. Also excluded is any judge who may preside over this case.

- 27           4.       Based upon the submissions of the Parties and the evidence submitted  
28 therein, the Court conditionally makes the following findings for settlement purposes only,

1 subject to final affirmation at the Fairness Hearing: (a) the members of the Settlement Class are  
2 so numerous as to make joinder impracticable; (b) there are questions of law and fact common to  
3 the Settlement Class, and such questions predominate over any questions affecting only  
4 individual Settlement Class Members; (c) plaintiffs' claims and the defenses thereto are typical of  
5 the claims of Settlement Class Members and the defenses thereto; (d) plaintiffs and their counsel  
6 can and have fairly and adequately protected the interests of the Settlement Class Members in this  
7 action; and (e) a class action is superior to all other available methods for fairly and efficiently  
8 resolving this action and provides substantial benefits to the Parties, the Settlement Class  
9 Members and the Court.

10           5.       This matter is conditionally certified as a class action for settlement  
11 purposes only, under California Code of Civil Procedure Section 382, California Civil Code  
12 Section 1781, and California Rules of Court, Chapter 6, Rules 3.767 *et seq.*, as applicable.

13           6.       The Court appoints Govinda Hogan, Catherine Giasone, Heather Bodor,  
14 James Manning, Adrian Haro, Jeffrey Sherrill, Johnnie Pacheco, and Isabella Janovick as Class  
15 Representatives. The Court also appoints Kirtland & Packard LLP and Newport Trial Group as  
16 Class Counsel for purposes of this Settlement.

17           7.       A Final Approval Hearing shall be held before this Court at \_\_\_ a.m. on  
18 \_\_\_\_\_ 2012 in Dept. \_\_\_ of the Los Angeles County Superior Court, to address:  
19 (a) whether the proposed Settlement should be finally approved as fair, reasonable and adequate,  
20 and whether the Final Approval Order and Judgment should be entered; and (b) whether Class  
21 Counsel's application for attorneys' fees, costs, expenses and incentive awards should be  
22 approved. Consideration of any application for an award of attorneys' fee, costs, expenses and  
23 incentive awards shall be separate from consideration of whether or not the proposed Settlement  
24 should be approved, and from each other, and shall be embodied in separate orders.

25           8.       With the exception of such proceedings as are necessary to implement,  
26 effectuate and grant final approval to the terms of the Settlement Agreement, all proceedings are  
27 stayed in this Action and all Settlement Class Members are enjoined from commencing or  
28 continuing any action or proceeding in any court or tribunal asserting any claims encompassed by

1 the Settlement Agreement, unless the Settlement Class Member timely files a valid Request for  
2 Exclusion as defined in the Settlement Agreement.

3 9. The Court approves, as to form and content, the long and short-form  
4 Publication Notices, substantially in the forms attached as Exhibits C, and D to the Settlement  
5 Agreement, to be published as follows:

6 a. The long-form Publication Notice shall be published online at  
7 www.USPLABSETTLEMENT.com, an internet website to be established by the Settlement  
8 Administrator within thirty (30) days after the date of entry of this Preliminary Approval Order.

9 b. The short-form Publication Notice shall be published one time in  
10 "Sports Illustrated," a large-circulation nationwide sports magazine within thirty (30) days after  
11 the date of entry of this Preliminary Approval Order. Publication Notice shall extend to two (2)  
12 additional nationwide magazines, "Men's Fitness" and "Muscle and Fitness," within seventy-five  
13 (75) days after the date of entry of the Preliminary Approval Order.

14 c. Additional internet notice shall begin within thirty (30) days after  
15 the date of entry of this Preliminary Approval Order and shall consist of the following:

16 (1) Information Ads: Advertising banners directing potential  
17 Class Members to the main settlement website are to be published on the following portal and  
18 demographic-targeted websites:

- 19 (a) Google.com
- 20 (b) Yahoo
- 21 (c) YouTube
- 22 (d) Amazon.com
- 23 (e) CNN.com/health
- 24 (f) FOXnews.com/health
- 25 (g) Men'sHealth .com
- 26 (h) MuscledandFitness.com
- 27 (i) Bodybuilding.com
- 28 (j) About.com/bodybuilding

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(k) Nitrofatburners.com

(2) Social Media: A dedicated USPlabs settlement page will be posted on Facebook.com directing Class Members to the main settlement website. Facebook-specific banner ads will also be displayed to demographic-targeted users.

(3) Email Notification: An e-mail based notice will be delivered to a database of persons who have purchased or shown interest in a direct to consumer offer within the past two years with similar demographic properties of USPlabs dietary supplements. No later than ten (10) days prior to the Final Approval Hearing, the Settlement Administrator and Notice Provider shall file with the Court declarations attesting to compliance with this Order.

10. The Court finds that the Parties' plan for providing notice to the Settlement Class (the "Notice Plan") described in Article IV of the Settlement Agreement constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Approval Hearing, and complies fully with the requirements of the California Rules of Court, the California Code of Civil Procedure, the Constitution of the State of California, the United States Constitution, and any other applicable law.

11. The Court further finds that the Notice Plan described in Article IV of the Settlement Agreement will adequately inform members of the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement. Any member of the Settlement Class who desires to be excluded from the Settlement Class, and therefore not bound by the terms of the Settlement Agreement, must submit to the Settlement Administrator, pursuant to the instructions set forth in the Notice, a timely and valid written Request for Exclusion, submitted online or postmarked at least twenty-one (21) days prior to the date set for the Final Approval Hearing in paragraph 7 above. Not later than ten (10) days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file it with the Court, and USPlabs' Counsel, a report stating the total



1 number of Persons that have submitted timely and valid Requests for Exclusion from the  
2 Settlement Class, and the names of such Persons.

3 12. Any member of the Settlement Class who elects to be excluded shall not be  
4 entitled to receive any of the benefits of the Settlement Agreement, shall not be bound by the  
5 release of any claims pursuant to the Settlement Agreement, and shall not be entitled to object to  
6 the Settlement Agreement or appear at the Final Approval Hearing. The names of all Persons  
7 timely submitting valid Requests for Exclusion shall be provided to the Court.

8 13. Service of all papers on counsel for the Parties shall be made as follows:

9 To Class Counsel:

10 Michael Louis Kelly, Esq.  
11 Kirtland & Packard LLP  
12 2041 Rosecrans Avenue, 3rd Floor  
El Segundo, CA 90245

13 Scott J. Ferrell, Esq.  
14 Newport Trial Group  
15 895 Dove Street, Suite 425  
Newport Beach, CA 92660

16 To USPlabs' Counsel:

17 Angel A. Garganta, Esq.  
18 Arnold & Porter LLP  
19 7th Floor, Three Embarcadero Center  
San Francisco, CA 94111

20 14. Only Settlement Class Members who have filed and served valid and  
21 timely notices of intention to appear, together with supporting papers, shall be entitled to be heard  
22 at the Final Approval Hearing.

23 15. Any Settlement Class Member who does not make an objection in the time  
24 and manner provided shall be deemed to have waived such objection and forever shall be  
25 foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as  
26 incorporated in the Settlement Agreement, adequacy of notice, the payment of attorneys' fees and  
27 costs, the payment of incentive awards, and/or the Final Approval Order and Judgment. Any  
28

1 Settlement Class Member who makes a timely written objection in the time and manner provided,  
2 but fails to appear at the Final Approval Hearing, shall have waived the right to appeal the  
3 fairness or adequacy of the proposed Settlement as incorporated in the Settlement Agreement,  
4 adequacy of notice, the payment of attorneys' fees and costs, the payment of incentive awards,  
5 and/or the Final Approval Order and Judgment.

6 16. In the event that the proposed Settlement is not approved by the Court, or  
7 in the event that the Settlement Agreement becomes null and void pursuant to its terms, this Order  
8 and all orders entered in connection therewith shall become null and void, shall be of no further  
9 force and effect, and shall not be used or referred to for any purposes whatsoever in this civil  
10 action or in any other case or controversy; in such event the Settlement Agreement and all  
11 negotiations and proceedings directly related thereto shall be deemed to be without prejudice to  
12 the rights of any and all of the Parties, who shall be restored to their respective positions as of the  
13 date and time immediately preceding the execution of the Settlement Agreement.

14 17. The Court may, for good cause, extend any of the deadlines set forth in this  
15 Order without further notice to the Settlement Class Members. The Final Approval Hearing may,  
16 from time to time and without further notice to the Settlement Class, be continued by order of the  
17 Court.

18  
19 **IT IS SO ORDERED.**

20  
21 Dated:

\_\_\_\_\_  
Honorable William F. Highberger  
Judge, Los Angeles County Superior Court

# Exhibit B

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

GOVINDA HOGAN, CATHERINE  
GIASONE, HEATHER BODOR, JAMES  
MANNING, ADRIAN HARO, JEFFREY  
SHERRILL, JOHNNIE PACHECO, and  
ISABELLA JANOVICK, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

USPlabs, LLC, a Texas Limited Liability  
Company, and DOES 1-25, inclusive,

Defendants.

CASE NO. BC486925

Assigned to the Hon. William F. Highberger  
Dept 307

**CLASS ACTION**

**[PROPOSED] FINAL APPROVAL  
ORDER AND JUDGMENT**

1                   WHEREAS, on \_\_\_\_\_, 2012, an Order Re: Preliminary Approval of  
2 Proposed Settlement (“Preliminary Approval Order”) was entered by this Court, preliminarily  
3 approving the proposed settlement of the Action pursuant to the terms of the Stipulation and  
4 Agreement of Settlement (the “Settlement Agreement”) and directing that notice be given to the  
5 members of the Settlement Class.

6                   WHEREAS, pursuant to the Parties’ plan for providing notice to the Settlement  
7 Class (the “Notice Plan”), the Settlement Class were notified by publication of the terms of the  
8 proposed Settlement and of a Final Approval Hearing to determine, *inter alia*: (1) whether the  
9 terms and conditions of the Settlement are fair, reasonable and adequate for the release of the  
10 Released Claims against the Released Parties; and (2) whether judgment should be entered.

11                   WHEREAS, a Final Approval Hearing was held on \_\_\_\_\_, 2012. Prior to  
12 the Final Approval Hearing, proof of completion of the Notice Plan was filed with the Court,  
13 along with declarations of compliance as prescribed in the Preliminary Approval Order.  
14 Settlement Class Members were therefore notified of their right to appear at the hearing in  
15 support of or in opposition to the proposed Settlement, the award of attorneys’ fees and expenses  
16 to Class Counsel, and the payment of incentive awards.

17                   NOW, THEREFORE, the Court, having heard the presentations of Class Counsel  
18 and Defendant’s Counsel, having reviewed all of the submissions presented with respect to the  
19 proposed Settlement, having carefully considered the requirements for class certification, having  
20 determined that the Settlement is fair, adequate, and reasonable, having considered the application  
21 of Class Counsel for awards of attorneys’ fees and expense reimbursements, and having  
22 reviewed the materials in support thereof, it is hereby ORDERED, ADJUDGED and DECREED  
23 THAT:

24                   1.       The capitalized terms used in this Final Approval Order and Judgment shall  
25 have the same meaning as defined in the Settlement Agreement except as may otherwise be  
26 ordered.

1                   2.       The Court has jurisdiction over the subject matter of this Action and over  
2 all claims raised therein and all Parties thereto, including the Settlement Class.

3                   3.       With respect to the Settlement Class, the Court finally finds and concludes,  
4 for settlement purposes only, that: (a) the Settlement Class Members are so numerous as to make  
5 joinder of them impracticable; (b) there are questions of law and fact common to the Settlement  
6 Class, and such questions predominate over any questions affecting only individual Settlement  
7 Class Members; (c) the Class Representatives' claims and the defenses asserted thereto are typical  
8 of the claims of Settlement Class Members and the defenses asserted thereto; (d) Class  
9 Representatives and Class Counsel have fairly and adequately protected the interests of  
10 Settlement Class Members throughout this action; and (e) a class action is superior to all other  
11 available methods for fairly and efficiently resolving this action and provides substantial benefits  
12 to both the litigants, the Settlement Class Members and the Court. The Court therefore determines  
13 that this action satisfies the prerequisites for class certification for settlement purposes under  
14 California Code of Civil Procedure Section 382, California Civil Code Section 1781, and  
15 California Rules of Court, Chapter 6, Rules 3.769 *et seq.*, as applicable, and finally certifies the  
16 Settlement Class for settlement purposes.

17                   4.       The Settlement Class, which will be bound by this Final Approval Order  
18 and Judgment, shall include all members of the Settlement Class who did not submit a timely and  
19 valid Request for Exclusion.

20                   5.       For purposes of the Settlement and this Final Approval Order and  
21 Judgment, the Settlement Class shall consist of the following: All persons who purchased for  
22 personal consumption, and not for re-sale, one or more of the USPlabs Products in the United  
23 States during the Class Period. Excluded from the Settlement Class are any officers, directors, or  
24 employees of USPlabs, and the immediate family member of any such person, as well as any  
25 individual who received remuneration from USPlabs in connection with that individual's use or  
26 endorsement of the USPlabs Products. Also excluded is any judge who may preside over this  
27 case.

1           6.       The Court finds that the Notice Plan set forth in Article IV of the  
2 Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the  
3 best notice practicable under the circumstances and shall constitute due and sufficient notice to  
4 the Settlement Class of the pendency of the Action, certification of the Settlement Class for  
5 settlement purposes only, the terms of the Settlement Agreement, and the Final Approval  
6 Hearing, and satisfies the requirements of California law and federal due process of law.

7           7.       The Settlement, as set forth in the Settlement Agreement, is in all respects  
8 fair, reasonable, adequate and in the best interests of the Settlement Class, and it is approved. The  
9 Parties shall effectuate the Settlement Agreement according to its terms. The Settlement  
10 Agreement and every term and provision thereof shall be deemed incorporated herein as if  
11 explicitly set forth and shall have the full force of an Order of this Court.

12           8.       Unless otherwise directed by the Court, within thirty (30) days of the  
13 Effective Date, the funds in the Common Fund, except for other disbursements authorized by this  
14 Judgment, shall be distributed to the Settlement Class pursuant to the terms of the Settlement  
15 Agreement.

16           9.       Upon the Effective Date, the Class Representatives and all Settlement  
17 Class Members shall have, by operation of this Order and Final Judgment, fully, finally and  
18 forever released, relinquished, and discharged all Released Parties from all Class Released Claims  
19 pursuant to Article VII of the Settlement Agreement.

20           10.      Settlement Class Members, including the Class Representatives, and the  
21 successors, assigns, parents, subsidiaries, affiliates or agents of any of them, are hereby  
22 permanently barred and enjoined from instituting, commencing or prosecuting, either directly or  
23 in any other capacity, any Class Released Claim against any of the Released Parties.

24           11.      Upon the Effective Date, the Class Representatives shall have, by operation  
25 of this Order and Final Judgment, fully, finally and forever released, relinquished, and discharged  
26 all Released Parties from all Individual Released Claims pursuant to Article VII of the Settlement  
27 Agreement.

1           12.    The Class Representatives, and the successors, assigns, parents,  
2 subsidiaries, affiliates or agents of any of them, are hereby permanently barred and enjoined from  
3 instituting, commencing or prosecuting, either directly or in any other capacity, any Individual  
4 Released Claim against any of the Released Parties.

5           13.    This Final Approval Order and Judgment, the Settlement Agreement, the  
6 Settlement which it reflects, and any and all acts, statements, documents or proceedings relating  
7 to the Settlement are not, and shall not be construed as, or used as an admission by or against  
8 USPlabs of any fault, wrongdoing, or liability on their part, or of the validity of any Class  
9 Released Claim or Individual Released Claim or of the existence or amount of damages.

10          14.    The payments ordered herein shall be made in the manner and at the times  
11 set forth in the Settlement Agreement.

12          15.    Except as otherwise provided in this Order, and the Court's award of costs  
13 and attorneys' fees pursuant to the Fee and Cost Application, the Parties shall bear their own costs  
14 and attorneys' fees. Without affecting the finality of the Judgment hereby entered, the Court  
15 reserves jurisdiction over the implementation of the Settlement, including enforcement and  
16 administration of the Settlement Agreement, including any releases in connection therewith, and  
17 any other matters related or ancillary to the foregoing.

18  
19                   **IT IS SO ORDERED.**

20  
21 Dated:

\_\_\_\_\_  
Honorable William F. Highberger

Judge of the Los Angeles County Superior Court



# Exhibit C

# If you bought USPlabs’ “OxyELITE Pro” and/or “Jack3d” dietary supplement products from January 01, 2008 until \_\_\_\_\_, 2012, you could be entitled to money from a legal settlement.

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been reached between USPlabs, LLC (“USPlabs” or “Defendant”) and Govinda Hogan, Catherine Giasone, Heather Bodor, James Manning, Adrian Haro, Jeffrey Sherrill, Johnnie Pacheco, and Isabella Janovick (“Class Representatives” or “Plaintiffs”), individually and on behalf of the Settlement Class.
- The settlement resolves a class action lawsuit about allegations that USPlabs made false and misleading statements in its labeling and advertising regarding the lawfulness, safety, and effectiveness of OxyELITE Pro and Jack3d dietary supplement products (the “USPlabs Products”).
- USPlabs denies the allegations and is settling to avoid the expense and distraction of litigation. The settlement does not mean USPlabs did anything wrong, and the Court has not decided that USPlabs did anything wrong.
- The settlement provides cash payments based on the amount of the USPlabs Products purchased.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>SUBMIT A VALID CLAIM</b>	The only way to get a cash payment, if you qualify.
<b>EXCLUDE YOURSELF</b>	This is the only option that allows you to be part of any other lawsuit against USPlabs about the legal claims in this case.
<b>OBJECT</b>	Tell the Court about why you don’t like the settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the settlement.
<b>DO NOTHING</b>	Get no benefits. Give up rights to be part of any other lawsuit against USPlabs about the legal claims in this case.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Cash payments for valid claims will be issued only if the Court approves the settlement and after the time for appeals has ended and any appeals are resolved. Please be patient.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT [WWW.USPLABSSETTLEMENT.COM](http://WWW.USPLABSSETTLEMENT.COM)  
PARA UNA NOTIFICACIÓN EN ESPAÑOL, VISITE NUESTRO SITIO DE INTERNET.**

## WHAT THIS NOTICE CONTAINS

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2. What is the lawsuit about?	
3. Why is this a class action?	
4. Why is there a settlement?	
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<b>THE SETTLEMENT BENEFITS—WHAT YOU GET.....</b>	<b>PAGE 4</b>
7. What does the settlement provide?	
8. What am I giving up in exchange for the settlement benefits?	
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## BASIC INFORMATION

### 1. Why was this notice issued?

A Court authorized this notice because you have a right to know about the proposed settlement in this class action lawsuit, and about all of your options, before the Court decides whether to give “final approval” to the settlement. This notice explains the lawsuit, the settlement, and your legal rights.

The case is known as *Govinda Hogan, Catherine Giasone, Heather Bodor, James Manning, Adrian Haro, Jeffrey Sherrill, Johnnie Pacheco, and Isabella Janovick, individually and on behalf of all others similarly situated, Plaintiffs, v. USPlabs, LLC*, Los Angeles County Superior Court, No. BC486925 (the “Action”). The people who sued are called the Plaintiffs. The company they are suing, USPlabs, is called the Defendant.

### 2. What is the lawsuit about?

On June 21, 2012, Plaintiffs filed this Action on behalf of themselves and all others similarly situated alleging that they relied on allegedly false and misleading statements on labeling and in advertisements regarding the lawfulness, safety, and effectiveness of the USPlabs Products, and that such statements violate state consumer protections laws (including California’s False Advertising Laws (“FAL”), Bus. & Prof. Code §17500 et. seq., California’s Unfair Competition Laws (“UCL”), Bus. & Prof. Code §17200 et seq., California’s Consumer Legal Remedies Act (“CLRA”), Civil Code §1750 et seq., and Texas’ Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.41 et seq.) as well as the Magnuson Moss Warranty Act, and that as a direct result of such violations USPlabs has been unjustly enriched.

USPlabs denies any wrongdoing or liability arising out of any of the facts or conduct alleged in the Action and believes that it has valid defenses to the allegations. The Court has not decided that USPlabs did anything wrong, and the settlement does not mean USPlabs broke the law. Both the Plaintiffs and USPlabs believe that the settlement is fair, adequate, and reasonable and that it is in the best interests of the Settlement Class.

### 3. Why is this a class action?

In a class action one or more people called “Class Representatives” (in this case, Govinda Hogan, Catherine Giasone, Heather Bodor, James Manning, Adrian Haro, Jeffrey Sherrill, Johnnie Pacheco, and Isabella Janovick) sue on behalf of people who have similar claims. All of these people or entities are a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

### 4. Why is there a settlement?

Both sides agreed to the settlement to avoid the cost and risk of further trial. The settlement does not mean that any law was broken. USPlabs denies all of the legal claims in this case. The Class Representatives and the lawyers representing them think the settlement is best for all Class Members.

## WHO IS IN THE SETTLEMENT?

To see if you are affected or if you can get benefits, you first have to determine whether you are a Settlement Class member.

### 5. How do I know if I am part of the settlement?

You are a member of the Settlement Class if you purchased for personal consumption, and not for resale, one or more bottles of the USPlabs Products in the United States from January 01, 2008 until \_\_\_\_\_, 2012. These dates are referred to as the “Class Period”.

### 6. I’m still not sure if I’m included in the settlement.

If you are not sure whether you are included in the Class, call 1-xxx-xxx-xxxx or go to [WWW.USPLABSSETTLEMENT.COM](http://WWW.USPLABSSETTLEMENT.COM).

## THE SETTLEMENT BENEFITS—WHAT YOU GET

### 7. What does the settlement provide?

The parties have agreed to create a settlement fund of \$2,000,000 (the “Common Fund”), to be paid by USPlabs for the benefit of Class Members who purchased the USPlabs Products for personal use between January 01, 2008 and \_\_\_\_\_, 20\_\_\_. Additionally, USPlabs has agreed to modify its labeling of the USPlabs Products in a way that will make the warning statements on them larger and more easily understood. The parties have further agreed that the costs to administer this Settlement, reasonable attorneys’ fees and costs to Class Counsel related to obtaining the settlement fund, and an incentive award to each of the eight named Plaintiffs will be paid from the Common Fund.

In order to make a claim, Class Members must provide purchase receipts documenting proof of purchase, or provide information, signed under penalty of perjury, relating to their purchase of the USPlabs Products, including where the purchase took place, the quantity purchased, and the approximate dates of purchase. Class Members who submit a Valid Claim with purchase receipts will be refunded the full amount documented, with no limit on the number of bottles refunded. Class Members who submit a Valid Claim without purchase receipts will be entitled to reimbursement of \$30.00 per bottle of OxyELITE Pro purchased and \$20.00 per bottle of Jack3d purchased, up to a maximum reimbursement of \$150. Directions for submitting a Claim are included in Section 9 below.

In the event that claims exceed the amount of the fund, the amount of reimbursement per bottle will be adjusted downward on a per bottle basis. In the event claims do not exceed the fund, the remaining funds will be paid out as a pro rata distribution to claimants, up to an amount of \$300.00 per claimant. Any remaining settlement funds will be donated to a court-approved charitable organization.

More details are in a document called the Settlement Agreement, which is available at [WWW.USPLABSSETTLEMENT.COM](http://WWW.USPLABSSETTLEMENT.COM).

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT [WWW.USPLABSSETTLEMENT.COM](http://WWW.USPLABSSETTLEMENT.COM)**

## 8. What am I giving up in exchange for the settlement benefits?

If the settlement becomes final, Class Members will be releasing USPlabs and all related people and entities for all the claims described and identified in Article VII of the Settlement Agreement (called the “Class Released Claims”). The Settlement Agreement is available at [www.USPLABSSETTLEMENT.COM](http://www.USPLABSSETTLEMENT.COM). The Settlement Agreement describes the Class Released Claims with specific descriptions, in necessarily accurate legal terminology, so read it carefully. You can talk to one of the lawyers listed below for free or you can, of course, talk to your own lawyer if you have questions about the released claims or what they mean.

## How to Get a Cash Payment—Submitting a Valid Claim Form

### 9. How can I get a cash payment?

To ask for a cash payment you must complete and submit a Claim Form along with the required supporting documentation, if you have it. If one was not already sent to you with this Notice, you can get a Claim Form at [www.USPLABSSETTLEMENT.COM](http://www.USPLABSSETTLEMENT.COM). You may also submit your claim via the website. The Claim Form describes what you must provide to prove your claim and receive a cash payment and generally requires information, provided by you under penalty of perjury, on where any purchases took place, the quantity of the USPlabs Products purchased, and the approximate dates of purchase. Please read the instructions carefully, fill out the Claim Form, and either submit it online at [www.USPLABSSETTLEMENT.COM](http://www.USPLABSSETTLEMENT.COM) or mail it postmarked no later than, \_\_\_\_\_, **20** to:

USPlabs Claims Administrator  
XXXXXXXXXX  
XXXXXXXXXX

### 10. When will I get my check?

Checks will be mailed to Class Members who send in valid Claim Forms on time, after the Court grants “final approval” of the settlement, and after the time for appeals has ended and any appeals have been resolved. If the judge approves the settlement after a hearing on \_\_\_\_\_ **20** (see the section “The Court’s Fairness Hearing” below), there may be appeals. Resolving these appeals can take time. Please be patient.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue USPlabs over the legal issues in this case, you must take steps to get out of the settlement. This is called asking to be excluded from—sometimes called “opting out” of—the Class.

### 11. If I exclude myself, can I get anything from the settlement?

If you ask to be excluded, you will not get a cash payment, and you cannot object to the settlement. But you may sue, continue to sue, or be part of a different lawsuit against USPlabs in the future. You will not be bound by anything that happens in this lawsuit.

**12. If I don't exclude myself, can I sue later?**

No. Unless you exclude yourself, you give up the right to sue USPlabs for the claims that this settlement resolves. You must exclude yourself from *this* Class to start or continue your own lawsuit.

**13. How do I get out of the settlement?**

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from *Hogan, et al. v. USPlabs, LLC*, Los Angeles County Superior Court, No. BC486925. Be sure to include your name, address, the approximate date of purchase, and your signature. You can't ask to be excluded at the website or on the phone. You must mail your exclusion request postmarked no later than \_\_\_\_\_, 20\_\_ to:

USPlabs Settlement Exclusions  
XXXXXXXXXX  
XXXXXXXXXX

Requests to opt-out that do not include all required information and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the settlement and any Final Judgment entered in this Litigation if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the settlement.

**THE LAWYERS REPRESENTING YOU**

**14. Do I have a lawyer in the case?**

The Court has designated the lawyers at Kirtland & Packard LLP, 2361 Rosecrans Avenue, Fourth Floor, El Segundo, CA 90245, and Newport Trial Group, 895 Dove Street, Suite 425, Newport Beach, CA 92660 to represent you as "Class Counsel". You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

**15. How will the costs of the lawsuit and settlement be paid?**

The Settlement Administrator's and Notice Provider's costs and fees associated with administering the Settlement, including all costs associated with the publication of the Notice of Settlement will be paid from the Common Fund. Plaintiffs Counsel's reasonable attorneys' fees and costs related to obtaining the settlement in an amount consistent with California law will also be paid from the Common Fund, subject to Court approval. The Class Representatives will also request that the Court approve a payment to each of them of up to \$1,000 to be paid from the Common Fund, as an incentive award for their participation as the Class Representatives, for taking on the risk of litigation, and for settlement of their individual claims as Class Members in this Action. These amounts are subject to Court approval and the Court may award less than these amounts.

## Objecting to the Settlement

You can tell the Court if you don't agree with the settlement or some part of it.

### 16. How do I tell the Court if I don't like the settlement?

You can object to the settlement if you don't like some part of it. You must give reasons why you think the Court should not approve it. To object, send a letter saying that you object to *Hogan, et al. vs. USPlabs, LLC*, Los Angeles County Superior Court, No. BC486925. Be sure to include your name, address, telephone number, your signature, the reasons why you object to the settlement, all documents you want the Court to consider, and indicate whether you or your attorney will appear at the fairness hearing (see the section on the "Court's Fairness Hearing" below). Mail the objection to the addresses below so that it is postmarked no later than \_\_\_\_\_, 20\_\_:

ADMINISTRATOR	COURT
USPlabs Objections XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX	Clerk of the Court XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX
CLASS COUNSEL	DEFENSE COUNSEL
Michael Louis Kelly, Esq. KIRTLAND & PACKARD LLP 2361 Rosecrans Avenue, Fourth Floor El Segundo, CA 90245  Scott J. Ferrell, Esq. NEWPORT TRIAL GROUP 895 Dove Street, Suite 425 Newport Beach, CA 92660	Angel A. Garganta, Esq. ARNOLD & PORTER LLP 7th Floor, Three Embarcadero Center San Francisco, CA 94111

### 17. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.



## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. If you have filed an objection on time you may attend and you may ask to speak, but you don't have to.

### 18. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at \_:00 \_m. on \_\_\_\_\_, \_\_\_\_\_, **20\_\_**, at \_\_\_\_\_ . The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.USPLABSSETTLEMENT.COM](http://www.USPLABSSETTLEMENT.COM). At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The judge will only listen to people who have asked to speak at the hearing (see Question 20). The Court will also decide how much to pay the Class Representatives and the lawyers representing Class Members. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

### 19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the judge may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. If you have sent an objection but do not come to the Court hearing, however, you will not have a right to appeal an approval of the settlement. You may also pay another lawyer to attend on your behalf, but it's not required.

### 20. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intent to Appear in the *Hogan, et al. v. USPlabs, LLC* litigation." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intent to Appear must be postmarked no later than \_\_\_\_\_ **20\_\_**, and be sent to the addresses listed in Question 16. You cannot speak at the hearing if you excluded yourself from the Class.

## IF YOU DO NOTHING

### 21. What happens if I do nothing at all?

If you are a Class Member and do nothing, you will not receive a payment from this settlement. And, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against USPlabs about the claims in this case, ever again.

## GETTING MORE INFORMATION

### 22. How do I get more information?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement, download a Claim Form and review additional case information at [www.USPLABSSETTLEMENT.COM](http://www.USPLABSSETTLEMENT.COM). You may also call toll-free 1-xxx-xxx-xxxx.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT [WWW.USPLABSSETTLEMENT.COM](http://www.USPLABSSETTLEMENT.COM)**

# Exhibit D

## **If you bought “OxyELITE Pro” and/or “Jack3d” you could be entitled to money from a legal settlement.**

A Settlement has been proposed in a class action lawsuit with USPlabs, LLC (“USPlabs”) involving USPlabs’ “OxyELITE Pro” and “Jack3d” dietary supplement products (the “Products”).

### **What Is the Lawsuit About?**

The lawsuit claims that USPlabs made misleading or false statements about the lawfulness, safety, and effectiveness of the Products. USPlabs denies any wrongdoing or illegal conduct but has agreed to settle the case to avoid the expense and distraction of litigation. The Settlement does not mean that USPlabs did anything wrong and the Court has not decided that USPlabs did anything wrong.

### **Am I a Member of the Class?**

You are a member of the Settlement Class if you purchased for personal consumption, and not for re-sale, one or more bottles of the Products in the United States from January 01, 2008 until \_\_\_\_\_, 2012.

### **What Does the Settlement Provide?**

The Parties have agreed to create a settlement fund of \$2,000,000 to pay valid claims, the costs to administer this Settlement, reasonable attorneys’ fees and costs, and incentive awards to the named Plaintiffs. Additionally, USPlabs has agreed to modify its labeling of the Products in a way that will make the warning statements on them larger and more easily understood.

### **How Much Money Can I Get Back?**

Claimants must provide purchase receipts or provide information, signed under penalty of perjury, relating to their purchase of the Products. Valid claims with purchase receipts will be refunded the full amount documented, with no limit on the number of bottles refunded. Valid claims without purchase receipts will be entitled to \$30.00 per bottle of OxyELITE Pro purchased and \$20.00 per bottle of Jack3d purchased, up to a maximum reimbursement of \$150. If claims exceed the amount of the fund, each valid claim will be reduced on a pro rata basis. Any money remaining in the fund after all claims are processed and expenses are paid will be paid out as an increase to the claim amounts paid, on a pro rata basis, up to a total maximum of \$300.00 per claimant. Any remaining funds thereafter will be donated to a court-approved charitable organization. Claim Forms must be submitted online or by mail and submitted or postmarked, by **Month Day, 2012**.

### **What Are My Other Options?**

If you do not want to be legally bound by the settlement, you must exclude yourself by **Month Day, 2012**. If you stay in the settlement, you may object to it by **Month Day, 2012**. The Court will hold a hearing on **Month Day, 2012** to consider whether to approve the settlement and determine the amount of attorneys’ fees and Plaintiffs’ incentive awards. Detailed information about the Settlement, including specific instructions about how to file a claim or object to, or exclude yourself from the Settlement are available at the website.

# Exhibit E

**FOR IMMEDIATE RELEASE**

LOS ANGELES, **[insert date]** / -- A notice program has been authorized by the Los Angeles County Superior Court to alert those who purchased USPlabs' "OxyELITE Pro" and/or "Jack3d" dietary supplement products from January 01, 2008 through \_\_\_\_\_, 20\_\_ about a proposed settlement with USPlabs, LLC ("USPlabs").

The settlement is a result of the Court certifying for settlement purposes only, on **[insert date]**, a class in a lawsuit alleging that USPlabs made misleading or false statements about the lawfulness, safety, and efficacy of its OxyELITE Pro and Jack3d dietary supplement products (the "USPlabs Products"). See *Hogan, et al. vs. USPlabs, LLC*, Los Angeles County Superior Court, No. BC486925. Now, the parties have reached a \$2 million settlement, which provides relief to purchasers of the USPlabs Products.

USPlabs has denied any wrongdoing whatsoever, and is settling the case only to avoid the expense and inconvenience of litigation. The Court has not decided that USPlabs did anything wrong.

All Class Members can submit claims online at: [www.USPLABSSETTLEMENT.COM](http://www.USPLABSSETTLEMENT.COM) or via U.S. mail. Claim forms must be postmarked no later than **[insert date]**. Class Members who submit purchase receipts with their claim will be reimbursed for the full amount documented, with no limit on the number of bottles refunded. Class Members who do not submit purchase receipts are entitled to receive \$30.00 per bottle of OxyELITE Pro purchased and \$20.00 per bottle of Jack3d purchased, up to a maximum refund of \$150.00, and are required to provide information, signed under penalty of perjury, regarding their product purchases. Class Members can also ask to be excluded from, or object to, the settlement. The deadline for exclusions and objections is **[insert date]**.

The Court has preliminarily appointed the law firms of Kirtland & Packard LLP and Newport Trial Group to represent the Class as Class Counsel.

Notices informing Class Members about their legal rights are appearing in print and online from **[insert claims period]**, leading up to the Final Approval Hearing on **[insert date]**. A toll-free number, **[insert number]**, has been established in this case along with a website, [www.USPLABSSETTLEMENT.com](http://www.USPLABSSETTLEMENT.com), where notices, claim forms, the settlement agreement, and the Court's preliminary approval order may be obtained. Those affected also may write to: USPlabs Settlement Administrator, **[insert address]**.

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# Exhibit F

Please refer to attached separate PDFs marked  
Exhibit F  
(USPlabs Product Labels 1 of 2 and 2 of 2)